

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3275 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BABUBHAI HIRABHAI

Versus

CITY DEPUTY COLLECTOR

Appearance:

MR AJ PATEL for Petitioners
GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/01/2000

CAV JUDGEMENT

Learned Advocate Shri A.J.Patel is appearing on
behalf of the petitioners and Ld. AGP Shri M.A.Patel is
appearing on behalf of the respondents.

2. The present Special Civil Application arises out
of an ultimate order dated 25.5.1988 passed by the

Additional Chief Secretary (Appeals) Revenue Department,
Ahmedabad in Revision Application No. SRD/CON/257/1986.

3. The facts of the present petition in short are that the petitioners are members of the Joint Hindu United Family of petitioner no.1. The petitioner no.1 being the Head and Karta of the said family, wanted to manage the affairs of the said Joint Hindu Family of the petitioners of which petitioner no.1 was the Karta. The said Joint Hindu Family owned and possessed land bearing Survey No. 274/2 admeasuring Acres 1.12 gunthas and Survey No. 275/2 admeasuring Acre 0.20 gunthas situated in the sim of Village Ghatlodiya, Taluka City District Ahmedabad. The said lands were running in the name of the petitioners in the Revenue Records. According to the petitioner on account of internal family arrangements amongst the members of the family it was decided to get the names of all the male members of the family entered in respect of land bearing S.NO. 274/2 in the Revenue Records and to get the names of the female members of the family entered in the revenue records in respect of the other survey nos. i.e. S.No. 275/2. The said decision was taken because the first petitioner was keeping indifferent health but in fact no division by metes or bounds was ever effected in respect of the said lands and the lands remained undivided and unpartitioned. Therefore, the application was given to the Talati of the village and the names of the petitioner no.1 to 6 were accordingly entered in the Pani Patrak in respect of land bearing S.No. 274/2 and names of the petitioners no.7 and 8 were entered in the Pani Patrak in respect of land bearing Survey No. 275/2. It is pertinent to note that the land in question were not divided by metes and bounds and lands continued to be in their pristine position and no division as contemplated under Section 8 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as the "Act") was effected. However, the Respondent Revenue Authorities had issued a notice under Section 9 of the Act to the petitioners alleging breach of Section 8 of the Act. The said notice was replied by the petitioners and they appeared and interalia contended that there was no violation of any of the provisions of the Act and because of the family arrangements, the lands were mutated in the names of 2 sets of member of the family in the Revenue Records without actually dividing the land without metes and bounds which will attract the provisions of the Act. Therefore, the request was made by the petitioners to drop the said proceedings. But the respondent authority by order dated 21.5.1986 cancellation of mutation entries no.2435 and 2185 and also directed the petitioners to pay

penalty of Rs.250/- and also ordered restoration of possession. Being aggrieved by the said order of the respondent authority, the petitioners preferred a Revision Application No. SRD/CON/257/1986 before the Additional Chief Secretary (Appeal) Revenue Department, Ahmedabad. According to the petitioners before the Appellate Authority, the two decisions of this Court given in Special Civil Application No. 1934 of 1979 and Special Civil Application No. 662 of 1971 were produced by the petitioners. Not only that, the oral arguments were advanced on 13.4.1987 and subsequently the written arguments were submitted on 3.6.1988 to the Appellate Authority. The Appellate Authority has not decided immediately but after long time on 25.5.1988 (back date) dismissed the revision application filed by the petitioner.

4. Being aggrieved by the said order passed by the Appellate Authority, the present Special Civil Application No. 3275 of 1988 is filed by the petitioner. At the time of admission of the said petition, rule has been issued and adinterim relief in terms of Para 8-B was granted on 30.6.1988 by this Court.

5. The Learned Advocate Mr.Patel has submitted that in fact Section 8 has not been violated because Section 8 provides that no land in any Local Area shall be transferred or partitioned so as to create a fragment. He further submitted that merely transferring the interest in the land no fragment is created. On the contrary, the move is in the direction of consolidation. It is, therefore, obvious on a conjoint reading of Section 7 & 8 of the Act that the underline act is to see that the fragments are not created and as far as existing fragments get merged in the land owned by contiguous owners so that the objection of the consolidation is met with. He further submitted that Section 9 of the Act provides that the transfer or partition of any land contrary to the provisions of this Act shall be void. Transfer or partition becomes void if it is contrary to the provisions of the Act and not otherwise. He further submitted that the Talati was not examined in the presence of the petitioners and it appears that the respondent examined the Talati behind the back of the petitioner which is against the principles of natural justice. He further submitted that by virtue of family arrangements, name of the brothers came to be mutated but that itself does not bring about division of the land by metes and bounds so as to attract the provisions of the act and such an idea is not frustrated by mere mutation of the lands in the Revenue records in the names of all

co-owners without effecting any partition of the land. In the present case, no such event took place and authorities below have failed to consider this aspect of the matter which has resulted into miscarriage of justice.

6. The Learned AGP Mr.M.A.Patel has submitted that considering the entry on Page 11 (Annexure A - Pani Patrak), the particular land in question has been divided in favour of each family member proportionately which amounts to division of the land in question and therefore Section 8 has been violated by the petitioners. Mr.Patel further submitted that the share has been decided and determined by family arrangements which amounts to a fragments and therefore Section 8 has been violated and below Authorities have rightly passed the orders in question. Mr.Patel further submitted that according to Section 8AA of the Act whereby by transferring the decree, succession or otherwise two or more persons are entitled to share in an undivided agricultural land in any local area for which standard areas have been fixed, and the land has to be partitioned among them, such partition shall be effected so as not to create a fragment. Mr.Patel relied upon Section 8AA 2(e) where such partition is made by the Court or the Collector, the following procedure shall be adopted and relevant sub-section (e) where the parties agree upon any other method of partition which will not result in the creation of a fragment, that method shall be followed in effecting partition. According to Mr.Patel that considering the provisions of Section 8AA 2(e), this amounts to a partition because parties are agreeing upon specific share in the land in question and therefore the said provision has been violated.

7. I have considered the submissions of both the advocates and I have also perused the order Annexure C in Case No. 57 of 1985 dated 24.5.1986 and Appeal No. 257 of 1986 dated 25.5.1988. I have also considered the two decisions of this Court given in Special Civil Application No. 1934 of 1979 dated 26.6.1986 and Special Civil Application No. 662 of 1971 dated 3.9.1976. Thus both the decisions of this Court has considered the very identical situation which arise in the present petition and this Court has come to a conclusion after considering the facts of those cases that there is no transfer of the fragment in the strict sense of the term but the interest of one of the owners of the fragment has got enlarged but has not passed to any third party. The prohibition under Section 7 (1) is that a fragment was not to be transferred except to a contiguous owner. The underlying

idea is that a small fragments do not remain fragments on transfer but shall get amalgamated with the lands owned by contiguous owners achieving the objective of consolidation. When one brother transfers his undivided interest in the land to another, the effect is to augment the bundle of rights of the transferees in the land and not to create any other further fragment so as to offend Section 8 of the Act.

7. In another case, it was decided that when both the parties i.e. vendor and vendee in question have agreed to enter their names jointly in respect of the entire block and not to partition the land in question. If the parties want to treat them as co-sharer and not to divide the block of the land in question that it should not have any objection on the parties of the authorities to refuse to confirm the sale. It is therefore directed that in view of the agreement between the Vendor and Vendee that the names of both the parties be entered as joint owners on the entire block of the land in the name of the vendee in respect of the entire land in question and a proper undertaking on the part of the vendor and vendee concerned that they do not intend to divide the land nor they will seek revision so as to result in fragments.

8. After considering the two decisions of this Court and the facts of the present case, here in the present case also, the shares of family members in the land in question has been determined but actually division of the land has not come into effect & land remains undivided and unpartitioned. By making entry in the revenue record in favour of family members by determining the particular share of each family member in their favour without actual division by metes and bound the land remained undivided and unpartitioned. This aspect has not been considered by both the below Authorities and only considering the share of each family members which has been determined and noted in Annexure A & B Page 11-12. Merely entering the names of family members and mentioning their share in their favour of the land in question does not amount to fragments and it also does not amount to violate Section 8 of the Act. Both the below authorities has not appreciated the undisputed facts represented by the petitioners and merely considering entry in Survey No. 274/2 and entry no. 2185 come to incorrect conclusions that Section 8 has been violated.

9. According to my opinion, the view taken by both the below Authorities is contrary to the provisions of

Section 8 of the Act and the land in question remained as it is. Only a share has been determined between the family members by making some family arrangement between them which does not amount to actual division of land by metes and bounds which would attract the provisions of the Act. In view of these facts and observations, the order passed by both the below Authorities Annexure C dated 21.5.1986 and Annexure G dated 25.5.1988 are quashed and set aside and the present petition is allowed. Rule is made absolute. No orders as to costs.

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